IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 14TH MARCH 2007 / 23RD PHALGUNA 1928

CRP.No. 1274 of 1993(B)

AA.755/1975 of APPELLATE AUTHORITY (LR),ATTINGAL
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REVN. PETITIONER/RESPONDENT:

KOCHAN BALAKRISHNAN,
PANNIKUZHIKALA VEEDU,
THIRUPURAM P.O.
THIRUPURAM VILLAGE,
NEYYATTINKARA.
***DIED.**

IT IS RECORDED THAT THE PETITIONER DIED AND B. REGHUVARAN, MEPPURATHU VEEDU, THIRUPURAM, NEYYATTINKARA IS IMPLEADED AS THE ADDITIONAL 2ND PETITIONER AS PER ORDER DATED 20.3.02 IN CMP 76/02.

BY ADV. SRI.G.S.REGHUNATH

RESPONDENTS/APPELLANT & GOVERNMENT:
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1. **PODIYAN NADAR VELAYUDHAN NADAR,**
   KADAYIVILAKATHU PUTHEN VEEDU,
   THIRUPURAM P.O.,
   NEYYATTINKARA.
   ****DIED. LRS. IMPLEADED.**

2. **GOVERNMENT OF KERALA, REP. BY THE CHIEF SECRETARY TO GOVERNMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695 001.**

****R1 DIED AND THE FOLLOWING PERSONS ARE IMPLEADED AS ADDITIONAL RESPONDENTS 3 TO 12 VIDE ORDER DATED 5.3.07 IN CMP 2960/93.**

ADDL.R3: A. GNANASELVAN, W/O VELAYUDHAN NADAR, KADAYIVILAKATTHU PUTHEN VEEDU, THIRUPURATHUR, THIRUPURAM , NEYYATTINKARA.

R4: U. PANKAJAKSHI, D/O DO. DO DO.

***** **R5: V. SUSEELA BHAI, D/O DO. DO DO. (DIED, LRS.IMPLEADED)**

**R6: V. RATNASWAMI, S/O VELAYUDHAN NADAR,
DO. DO DO.**

R7: V. RAMACHANDRAN, S/O DO. DO DO.

**R8: V. INDIRA KUMARI, D/O VELAYUDHAN NADAR,
DO. DO DO.**

**R9: V. BABY, D/O DO. DO.
DO. DO DO.**

R10: V. PADMAKUMARI, D/O DO. DO DO.

R11: V. THANKARAJAN, S/O DO. DO.

**R12: V. MURALEEDHARAN, IST GRADE OVERSEER,
ELECTRICAL SECTION, KOTHAMANGALAM,
EDAMALAYAR,
SON OF VELAYUDHAN NADAR, KADIYIVILAKATHU
PUTHEN VEEDU, THIRUPURAHUR, THIRUPPURAM.**

*****ADDL. R5 DIED AND LRS. IMPLEADED AS ADDL. RESPONDENTS
13 TO 17 VIDE ORDER DATED 9.2.07 IN I.A.2429/06.**

**ADDL. R13 : USHA KUMARI, D/O V. SUSEELA BHAI,
KADAYIVILAKATTHU PUTHEN VEEDU, THIRUPURATHUR,
THIRUPURAM , NEYYATTINKARA,
THIRUVANANTHAPURAM.**

**ADDL. R14: RADHAKRISHNAN, S/O THANKAPPAN NADAR,
-DO. DO.**

ADDL. R15: KALAKUMARI, D/O V. SUSEELA BHAI, DO. DO.

**ADDL. R16: NAYANTHARA, D/O -DO. DO. -DO. DO.
NIRMALYAM, KEDANKARA, MARYAPPURAM P.O.
NEYYATTINKARA, THIRUVANANTHAPURAM.**

**ADDL. R17: UDAYA KUMAR, S/O THANKAPPAN NADAR,
KADAYIVILAKATTHU PUTHEN VEEDU, THIRUPURATHUR,
NEYYATTINKARA,
THIRUVANANTHAPURAM.**

**R2 BY GOVERNMENT PLEADER SRI. M.R. SABU.
R10 BY ADV. SRI.V.CHITAMBARESH
R5 BY SRI G.P.SHINOD**

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 14/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N. KRISHNAN, J.

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C.R.P. NO. 1274 OF 1993

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Dated this the 14th day of March, 2007.

O R D E R

This revision is preferred by the respondent in A.A.755/75 of the Appellate Authority(LR), Attingal. A perusal of the appellate order would reveal that it was an appeal preferred against the preliminary finding dated 21.10.75 in O.A.70 of 1974. The appellant therein was the landlord. The Appellate Authority on a consideration of the materials held that there has been a previous finding on the question of tenancy and further that the tenant has not satisfied that he is entitled to fixity of tenure under Section 4A (1)(b) of the Land Reforms Act. Therefore, he set aside the finding of the Tribunal and remitted back the matter for final disposal. It is against that decision the tenant has come up in revision. During the pendency of the revision, the revision petitioner as well as the first respondent died. So also one of the legal representatives of the deceased respondent namely 5th respondent also died. Therefore, legal representatives had been impleaded and they are represented by counsel.

2. Heard both sides. The challenge in the revision is against the preliminary finding rendered by the Land Tribunal. The Appellate Authority observed that there had been some finding regarding the entitlement of fixity of tenure in a litigation O.S.689/75 and also that the tenant has not succeeded in establishing the contentions u/s 4A(1)(b) and therefore, one has to hold that the tenant is not entitled to fixity of tenure.

3. When ever a preliminary finding is entered into by a Tribunal, the normal practice is to issue a copy of the preliminary finding along with notice contemplated u/s 72 of the K.L.R. Act and thereafter permitting both sides to adduce evidence in support of their respective contentions. The tribunal has to enter into a finding regarding the question of fixity of tenure. So it is only at the final stage a final decision has to be rendered by the Land Tribunal. Unfortunately, in this matter, the Appellate Authority has gone a step further and made observations regarding the claim of the tenant. It is at a stage when the tenant has not been given any opportunity to put forward his contention on merits. Whether there is a binding finding regarding the fixity of tenure in O.S.689/75 of the Munsiff Court, Neyyattinkara is a matter that has to be adjudicated after hearing both sides and on a perusal of the relevant documents. Similarly an opportunity also has to be

given to the tenant to establish that he satisfies all the ingredients which he claimed in order to get a certificate of purchase under the provisions of the K.L.R. Act. Unfortunately, the Appellate Authority at a very premature stage made the observations which necessarily has to be set aside.

Therefore, the C.R.P. is allowed and the matter is remanded back to the Tribunal for consideration regarding the claim of tenancy set up by the legal representatives of the tenant. The question whether there is any binding finding in O.S.689/75 regarding the fixity of tenure as well as the question whether the tenant is entitled to the tenancy right as claimed by him are all matters that can be decided by the Tribunal after permitting both sides to adduce both documentary as well as oral evidence in support of their respective contentions. It is made clear that the observations made by the Appellate Authority or by this Court shall not be taken into consideration at the stage of final disposal of the matter. Parties are directed to appear before the Land Tribunal, Thiruvananthapuram on 19.4.2007.

M.N. KRISHNAN, JUDGE.

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M.N. KRISHNAN, J.

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C.R.P. NO. 1274 OF 1993

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J U D G M E N T

14th March, 2007.